

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**In re the Detention of:**

**No. 25061-0-III**

**JOHN LAWRENCE ROBINSON,**

**Appellant,**

**v.**

**STATE OF WASHINGTON,**

**Respondent.**

**Division Three**

**UNPUBLISHED OPINION**

Sweeney, J. — This appeal follows entry of an order committing the appellant as a sexually violent predator by authority of chapter 71.09 RCW. The appellant challenges a number of the court's findings of fact and conclusions of law on various grounds. We find ample support in this record for the court's findings, and those findings, in turn, support the conclusions of law required by the statutory scheme to commit the appellant as a sexually violent predator. We, therefore, affirm the order of the trial court.

**FACTS**

John Robinson was convicted of first degree rape in 1990 and first degree

kidnapping in 1991. He kidnapped to facilitate the rape. And he frequently stalked his victims before assaulting them. Based in part on Mr. Robinson's sexual offense history, the State petitioned to have Mr. Robinson committed as a sexually violent predator upon his release from prison in 1997.

The case was tried to the court. Dr. Dennis Doren, a psychologist, testified as an expert witness for the State. Dr. Robert Halon and Dr. Richard Wollert, also psychologists, testified as expert witnesses on Mr. Robinson's behalf.

Dr. Doren testified that Mr. Robinson suffers from paraphilia. Paraphilia is a pattern of sexual arousal caused by sexual contact with nonconsenting adults. Report of Proceedings (RP) (May 11, 2004) at 158. He based this diagnosis on Mr. Robinson's adult experiences and behaviors. Dr. Doren also testified that Mr. Robinson suffers from personality disorder not otherwise specified with narcissistic and antisocial features. And he and Mr. Robinson's former therapist, Cathi Harris, opined that these mental traits affect Mr. Robinson's ability to control his sexually violent behavior. Ms. Harris explained that Mr. Robinson demonstrated lack of control by continuously stalking female staffers at the special commitment center where he has been confined since his release from prison.

Dr. Doren also assessed the likelihood that Mr. Robinson would reoffend. To do

so, he used three actuarial instruments, the Static-99, the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR), and the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R). Static-99 test results indicated that Mr. Robinson was 52 percent likely to be convicted of a new sex offense within 15 years if released. The RRASOR test results showed Mr. Robinson was 37 percent likely to be convicted of a new sex offense within 10 years if released. And the MnSOST-R test results provided that Mr. Robinson was 54 percent likely to be arrested for a new sex offense within 6 years if released.

The court concluded that Mr. Robinson is a sexually violent predator based on this testimony and ordered that he be committed.

#### DISCUSSION

Mr. Robinson first assigns error to the trial court's finding of fact that classified his kidnapping offense as "sexually motivated." He argues that the finding is actually a conclusion of law. He is correct. It is not a finding of fact; it is, rather, a conclusion of law. But one easily supported by the record here.

Chapter 71.09 RCW, the sexually violent predators act, authorizes the State to petition to have a person civilly committed as a sexually violent predator. RCW 71.09.030. To affirm the commitment of Mr. Robinson, we must be satisfied that the

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court had sufficient evidence to find that Mr. Robinson is a sexually violent predator. *In re Det. of Thorell*, 149 Wn.2d 724, 758-59, 72 P.3d 708 (2003). A “sexually violent predator” is a person (1) who has been convicted of or charged with a crime of sexual violence, (2) who suffers from a mental abnormality or personality disorder, and (3) whose mental abnormality or personality disorder makes him likely to engage in predatory acts of sexual violence if not confined in a secure facility. RCW 71.09.020(18); *Thorell*, 149 Wn.2d at 758-59.

#### Sexually Violent Offense

Mr. Robinson first suggests that the court’s findings and conclusions do not establish that he has been convicted of a sexually violent offense. He specifically asserts that the court did not enter findings to support its conclusions that his first degree kidnapping conviction was sexually motivated and, therefore, a sexually violent offense under RCW 71.09.020(17). He, however, concedes that (1) he was convicted of first degree rape, and (2) proof of one conviction of a sexually violent offense is sufficient to satisfy the first element of the statutory definition of “sexually violent predator.”

Appellant’s Br. at 13.

We review challenges to the court’s findings of fact and conclusions of law by determining whether substantial evidence supports the challenged findings and whether

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those findings support the court's conclusions. *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). Unchallenged findings are verities on appeal. *In re Det. of Smith*, 117 Wn. App. 611, 615, 72 P.3d 186 (2003).

Mr. Robinson was convicted of first degree kidnapping. Clerk's Papers (CP) at 18 (unchallenged finding of fact 4). The court found that this conviction was sexually motivated: "The First Degree Kidnapping of M.O. was sexually motivated." CP at 18 (finding of fact 5). And, based in part on this finding, the court concluded that Mr. Robinson's kidnapping conviction was a sexually violent offense:

The First Degree Kidnapping charge of which [Mr. Robinson] was convicted in February 1991 . . . and which was sexually motivated, is a sexually violent offense, as that term is defined in RCW 71.09.020(15).<sup>[1]</sup>

CP at 21 (conclusion of law 4).

Again, the court's finding that Mr. Robinson's kidnapping offense was sexually motivated is a conclusion of law. *See* former RCW 9.94A.030(39) (2003), now RCW 9.94A.030(43) (defining "sexual motivation"). And we review challenged conclusions of law de novo, even when they are mislabeled as findings of fact. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986); *Madarash*, 116 Wn. App. at 509.

First degree kidnapping is sexually motivated if the offender's sexual gratification

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<sup>1</sup> This definition is now in RCW 71.09.020(17). Laws of 2009, ch. 409, § 1.

was one purpose for committing the crime. RCW 71.09.020(17); former RCW 9.94A.030(39). Here, Mr. Robinson committed kidnapping to facilitate a rape. Sexual intercourse is a necessary component of rape. RCW 9A.44.040–.060. And it necessarily follows that Mr. Robinson’s sexual gratification was one of his purposes for the kidnapping.

Moreover, the outcome here would not change even were we to vacate these challenged conclusions. The court also found that Mr. Robinson was convicted of first degree rape. CP at 18 (unchallenged finding of fact 3). And Mr. Robinson does not challenge the court’s finding. First degree rape is a “sexually violent offense.” RCW 71.09.020(17). The court’s finding supports its conclusion that Mr. Robinson has been convicted of a sexually violent offense.

#### Mental Abnormality and a Personality Disorder

Mr. Robinson next argues that the State failed to show that he suffers from a mental abnormality and the court failed to conclude that he suffers from a personality disorder. He urges that the court’s findings on mental abnormality and personality disorder are not supported by admissible or reliable evidence. For instance, Mr. Robinson asserts that the court should not have relied on his nonconviction data or the testimony of the State’s expert witness when entering its findings, and he maintains that

the court's finding on the reliability of the State's expert opinions ignores the fact that the State's expert, Dr. Doren, adjusted his test results. He also complains that the record does not support the court's findings that *his* expert witnesses' opinions were based on diagnostic methods not generally used by other mental health professionals.

Mr. Robinson also challenges the trial court's determination that his mental abnormality and personality disorder greatly impact his ability to control his sexually violent behavior. He argues that the court's "lack of control" findings are not supported by the record and that those findings do not support the court's conclusion on "lack of control."

Again, the sexually violent predators act requires proof that an offender suffers from either a mental abnormality or a personality disorder. RCW 71.09.020(18); *In re Det. of Halgren*, 156 Wn.2d 795, 811, 132 P.3d 714 (2006); *In re Pers. Restraint of Young*, 122 Wn.2d 1, 27, 857 P.2d 989 (1993). A "mental abnormality" is "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others." RCW 71.09.020(8). A "personality disorder" is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in

adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.” RCW 71.09.020(9).<sup>2</sup>

The trial court here entered two findings pertinent to mental abnormalities and personality disorders. Finding of fact 7 provides:

[Mr. Robinson] currently suffers from Paraphilia Not Otherwise Specified (NOS) – Nonconsenting Persons, as diagnosed by Dr. Dennis Doren.

CP at 18. And finding of fact 8 states:

[Mr. Robinson] currently suffers from Personality Disorder NOS with Antisocial and Narcissistic features, as diagnosed by Dr. Dennis Doren.

CP at 18.

Mr. Robinson argues that these findings are not supported by sufficient evidence. Again, we review challenged findings for substantial evidence. *Madarash*, 116 Wn. App. at 509. Substantial evidence is any evidence that could persuade a rational person beyond a reasonable doubt that Mr. Robinson has a mental illness. *World Wide Video, Inc. v. City of Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991); *In re Det. of Stout*, 128 Wn. App. 21, 32, 114 P.3d 658 (2005), *aff’d*, 159 Wn.2d 357, 150 P.3d 86 (2007). Mr.

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<sup>2</sup> The legislature added the definition of “personality disorder” in 2009. Laws of 2009, ch. 409, § 1. This definition is similar to the definitions offered by experts before the definition was added. See *In re Det. of Sease*, 149 Wn. App. 66, 71 n.4, 201 P.3d 1078 (2009).



Robinson's claim of insufficiency admits the truth of the State's evidence and all reasonable inferences from that evidence. *Stout*, 128 Wn. App. at 32.

The State's expert, Dr. Doren, diagnosed Mr. Robinson with paraphilia NOS (nonconsent), and explained it as a mental abnormality:

- Q. Dr. Doren, based upon your education and experience and your review of the records in this case do you have an opinion to a reasonable degree of psychological or professional certainty whether . . . Mr. Robinson[ ] appears to have a mental disorder which may meet the definition of a mental abnormality within the statute?
- A. I have such an opinion.
- Q. What is that opinion, sir?
- A. My opinion to a reasonable degree of professional certainty is that Mr. Robinson does have one such diagnosis.
- Q. What is the name?
- A. Its name is paraphilia. And then there's specifiers called not otherwise specified nonconsent.

RP (May 11, 2004) at 158. Dr. Doren also testified that Mr. Robinson suffers from a personality disorder NOS with narcissistic and antisocial features:

- Q. Based upon your education and experience and your review of the records in this case, do you have an opinion to a reasonable degree of psychological certainty whether Mr. Robinson suffers from a personality disorder?
- A. I do have such an opinion.
- Q. What is that opinion?
- A. My opinion to a reasonable degree of professional certainty is that Mr. Robinson has one such personality disorder.
- Q. What is that called?
- A. The diagnosis I gave for him is personality disorder not otherwise specified. And the manual again requires a clarification of the type. For Mr. Robinson I described it as with antisocial and narcissistic

features. And antisocial personality disorder is one type of personality disorder, narcissistic is another. What I'm essentially saying is that he has a personality disorder and it is best described as having features of both of those types.

RP (May 12, 2004) at 197.

This testimony alone is sufficient to support the trial court's findings of paraphilia and personality disorder. Mr. Robinson urges us, nonetheless, to disregard Dr. Doren's opinions as "clearly erroneous and outdated." Appellant's Br. at 24. We, however, defer to the trial court on issues of the credibility of expert witnesses and the persuasiveness of the evidence. *Stout*, 128 Wn. App. at 32.

Mr. Robinson also challenges findings of fact 10, 11, and 12.

Challenged finding of fact 10 states:

The methodology used by Dr. Doren in rendering his diagnosis of [Mr. Robinson], including the use of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), is generally accepted by other mental health professionals who evaluate and assess sex offenders, including those subject to commitment as SVPs [sexually violent predators].

CP at 19. Mr. Robinson argues that this finding "ignores the fact that Dr. Doren . . . adjusted the results of the [actuarial] tests based upon his clinical judgment and without conducting a personal interview." Appellant's Br. at 24. His argument, however, confuses Dr. Doren's mental illness *diagnosis* with his *assessment* of Mr. Robinson's risk

to reoffend. His mental illness diagnosis, the focus of finding of fact 10, was not based on the results of any actuarial test. It was based on the DSM-IV-TR. Actuarial results, adjusted or not, are, therefore, irrelevant. The court's finding, then, correctly omits any reference to actuarial tests.

Challenged finding of fact 11 says:

Dr. Halon's analysis of the diagnostic issue in this case, and his critique of Dr. Doren's methods on this subject, is not generally accepted in the scientific community of mental health professionals who evaluate and assess sex offenders in SVP commitment cases.

CP at 19. Challenged finding of fact 12 provides:

Dr. Halon's conclusions with regard to the diagnostic issue in this case [are] not consistent with the evidence regarding [Mr. Robinson].

CP at 19. Mr. Robinson contends that findings 11 and 12 are contrary to the evidence.

The evidence in the record, however, supports these findings. RP (May 11, 2004) at 159-60, 169-74; RP (May 12, 2004) at 197-208.

Mr. Robinson next challenges the court's conclusion that Mr. Robinson suffers from a mental abnormality. Conclusion of law 5 states:

[Mr. Robinson's] Paraphilia NOS (Nonconsenting Persons) is a mental abnormality, as that term is defined in RCW 71.09.020(8).

CP at 21.

He first complains that this conclusion does not also state that he suffers from a personality disorder. The language of the

“sexually violent predator” definition requires proof that an offender suffers from *either* a mental abnormality *or* a personality disorder. RCW 71.09.020(18). “[T]he terms . . . are two distinct means of establishing the [sexually violent predator definition’s] mental illness element.” *Halgren*, 156 Wn.2d at 811. A court, then, need not conclude that a mental abnormality *and* a personality disorder exist. The court’s conclusion that Mr. Robinson suffers from a mental abnormality alone is sufficient.

Mr. Robinson also appears to argue that the court erred by concluding that paraphilia is a mental abnormality because the evidence does not establish whether his case of paraphilia is congenital or acquired.

A “mental abnormality” can be either “a congenital or acquired condition.” RCW 71.09.020(8). A condition is “congenital” if it exists at or dates from birth. Webster’s Third New International Dictionary of the English Language 478 (1993). A condition is “acquired” if it is “developed after birth . . . – opposed to *congenital*.” *Id.* at 18.

According to these definitions, then, the two terms are mutually exclusive. In other words, a condition is acquired if it is not congenital and vice versa. But whether the condition existed at birth or was acquired later is not critical to the determination that the diagnosed condition is a mental abnormality.

The record here suggests that Mr. Robinson’s case of paraphilia is an *acquired*

condition because Dr. Doren's diagnosis is based on Mr. Robinson's adult experiences, behaviors, and statements. Other courts have upheld commitments based on a diagnosis of paraphilia (nonconsent). *In re Det. of Post*, 145 Wn. App. 728, 756-57, 757 n.18, 187 P.3d 803 (2008) (string citing such cases). The court's conclusion of a mental abnormality is, therefore, well supported by these findings and the record.

#### Lack of Control

Mr. Robinson next contends that the State did not establish that his paraphilia and personality disorder diagnoses relate to his lack of control over his actions.

A diagnosis of a mental abnormality or personality disorder is not, in itself, sufficient evidence for a fact finder to find a lack of control. *Thorell*, 149 Wn.2d at 761-62. The mental illness element of the "sexually violent predator" definition also requires proof that "the mental abnormality or personality disorder, coupled with the person's sexual offense history, supports the finding that the person has serious difficulty controlling his behavior." *Id.* at 759.

The court here found that Mr. Robinson's paraphiliac condition and personality disorder, coupled with his history of sexual assaults, attraction to nonconsensual sex, and acts of frottage and stalking shows that he has difficulty controlling his sexually violent behavior:

The following findings of fact are particularly relevant on the issue of

whether [Mr. Robinson] has serious difficulty controlling his sexually violent behavior as a result of his diagnosed mental disorders:

- a. His prior sexual assaults of adult women, including his convictions . . . ;
- b. Several of [Mr. Robinson's] sexual assaults evolved from what began as consensual sexual acts. This demonstrates [Mr. Robinson's] sexual attraction to non-consensual sex;
- c. [Mr. Robinson's] continued acts of frottage against female staff at the Special Commitment Center (SCC) and stalking of female staff at the SCC. The stalking behavior exhibited by [Mr. Robinson] at the SCC was very similar to behavior reported by [Mr. Robinson's] previous sexual assault victims.

CP at 19 (finding of fact 13). Mr. Robinson first argues that findings 13(a) and (b) are based on inadmissible data. *See* RCW 10.97.030(2) (defining “nonconviction data”).

But he did not object to the admission of this evidence on this ground at trial. *See* CP at 1040-41, 1408 (motions in limine). Failure to do so precludes him from raising the issue on appeal. *State v. Thomas*, 150 Wn.2d 821, 856, 83 P.3d 970 (2004).

He also argues that the evidence in the record does not support finding 13(c). His former therapist (Cathi Harris) and Dr. Doren, however, testified that his SCC progress notes reflected that he stalked female staffers at SCC over the course of several years. RP (Oct. 21, 2004) at 52; RP (May 12, 2004) at 187. And Ms. Harris explained the connection between Mr. Robinson's mental illnesses and his stalking behavior:

[T]here's aspects of the stalking that could fall within the dysfunctional thinking, and that would be stalking often has a characteristic of the individual being fixated or obsessed. So, that would speak to the dysfunctional thinking.

Deviant sexual interests, stalking has something to do with, with the individual's deviant interest of this person. Generally, if it's a healthy interest, as opposed to a deviant one, you won't see the stalking and the obsessing.

And then the entitlement issues, generally the individuals that I could tell that John had sort of this fixation with, and would seek out and stalk, were individuals that he felt some type of attachment, an unhealthy attachment to.

RP (Oct. 21, 2004) at 52. Mr. Robinson stalked some of his victims before assaulting them. This testimony supports the court's finding of stalking in finding of fact 13(c).

The record also shows that Mr. Robinson committed acts of frottage against a female staffer. The record shows that Mr. Robinson moved his arm across the upper part of a female staffer's waist:

In April of 2001 there was a behavior management report, behavior management reports basically being the Special Commitment Center's disciplinary reports. April 2001 was a behavior management report for physical assault on a female staff member. Details being as reported. That he when walking by a staff, female staff member, bumped into her and had his arm move across the upper part of her waist. And when called on it he didn't respond.

RP (Jan. 10, 2005) at 98. Frottage is the act of rubbing against the body of another person for sexual gratification. Merriam-Webster's Online Dictionary <http://www.merriam-webster.com> (last visited Sept. 22, 2009). And, of course, there is ample evidence of this here. But even without the reference to frottage, finding of fact 13 supports conclusions of law 6 and 7, which

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state:

[Mr. Robinson's] Paraphilia NOS (Nonconsenting Persons) and Personality Disorder NOS with Antisocial and Narcissistic features cause him serious difficulty controlling his sexually violent behavior.

CP at 21 (conclusion of law 6). And:

The combination of the following is sufficient to conclude that [Mr. Robinson's] mental disorders cause him serious difficulty controlling his sexually violent behavior: [Mr. Robinson's] Paraphilia NOS (Nonconsenting Persons), Personality Disorder NOS with Antisocial and Narcissistic traits, [Mr. Robinson's] prior sexually violent behavior, and the testimony of Dr. Doren and Ms. Cathi Harris linking [Mr. Robinson's] mental disorders to a serious lack of control.

CP at 21 (conclusion of law 7).

In summary, the record supports the court's findings regarding the existence of a mental illness. And those findings support the court's conclusions that Mr. Robinson suffers from a mental illness which causes him to have serious difficulty controlling his behavior. The court's findings and conclusions, then, satisfy the mental illness element of the "sexually violent predator" definition. *Thorell*, 149 Wn.2d at 758-59.

Risk of Reoffending

Mr. Robinson next argues that the record does not support the trial court's finding that he is more than 50 percent likely to commit another sexually violent offense. He argues that his MnSOST-R and Static-99 test results cannot be compared to his RRASOR



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test result because the former are based on different criteria (testing anti-social features) than the latter (testing sexual deviancy). He also asserts that the finding does not account for age, confidence intervals, or reliability factors. Mr. Robinson maintains that if these had been considered, only the Static-99 would indicate that he is more than 50 percent likely to reoffend.

A sex offender may be civilly committed if the State proves, in addition to the other two elements we discussed above, that the offender's mental illness makes the offender likely to engage in predatory acts of sexual violence if not confined in a secure facility. RCW 71.09.020(18); *Thorell*, 149 Wn.2d at 758-59. The record supports this element of the sexually violent predator definition if *any* evidence shows "that the person more probably than not will engage in such acts if released unconditionally from detention." RCW 71.09.020(7).

Here, the court found that Mr. Robinson is more than 50 percent likely to commit another sexually violent offense if not confined:

Two of the three actuarial instruments used peg [Mr. Robinson's] risk of sexual recidivism above the statutory threshold of greater than 50% likely to reoffend.

CP at 20 (finding of fact 16).

Mr. Robinson contends (after adjusting the test results to account for each

instrument's confidence interval, reliability factor, and margin of error) that only one actuarial instrument (the Static-99) shows he is likely to commit sexually violent acts if not confined. Appellant's Br. at 27-28.

Substantial evidence in the record, however, supports the court's finding. Dr. Doren assessed the risk that Mr. Robinson would sexually reoffend using three actuarial instruments: Static-99, RRASOR, and MnSOST-R. Test results indicate, respectively, that Mr. Robinson was 52 percent likely to be convicted of a new sex offense within 15 years, 37 percent likely to be convicted of a new sex offense within 10 years, and 54 percent likely to be arrested for a new sex offense within 6 years. The Static-99 and the MnSOST-R, then, show that Mr. Robinson is more than 50 percent likely to commit another sex offense if he is not confined.

And, contrary to Mr. Robinson's assertion, finding of fact 16 supports the court's conclusion that Mr. Robinson is likely to commit a new sex offense if he is not confined.

Conclusion of law 8 provides:

[Mr. Robinson] is likely to engage in predatory acts of sexual violence unless he remains confined to a secure facility, consistent with RCW 71.09.020(7).

CP at 21. We, therefore, conclude that this conclusion of law is supported.

Mr. Robinson also challenges five other findings of fact about the methods Dr.

Doren and Dr. Wollert used to assess the risk that he will reoffend:

Finding of fact 14:

The adjusted actuarial risk assessment method used by Dr. Doren in this matter is the generally accepted manner in which risk is assessed in SVP cases and is the current standard of practice in the field.

CP at 19. Finding of fact 15:

The actuarial risk assessment instruments used do not take into account all factors associated with an offender's risk to sexually reoffend. As a result, it is necessary to consider other factors in assessing the risk of sexual recidivism, including: Psychopathy and sexual deviance, the effect of treatment (if any), the effect of conditions of release (if any), and the effect of increased age (if any).

CP at 20. Finding of fact 17:

Scientific research supports the conclusion that the actuarially derived risk assessment of [Mr. Robinson] is an underestimate of [Mr. Robinson's] risk to commit predatory acts of sexual violence if he is not confined in a secure facility.

CP at 20. Finding of fact 18:

The generally accepted view of the community of mental health professionals who evaluate and assess sex offenders is that the sexual recidivism risk posed by high risk offenders (as assessed using the actuarial instruments) does not appreciably decrease until age 60.

CP at 20. And Finding of fact 19:

Dr. Wollert's methods of assessing the impact of age on sexual recidivism are not generally accepted in the community of mental health professionals who evaluate and assess persons in SVP matters. This includes his use of Bayes' Theorem and the Null Hypothesis.

CP at 20. Mr. Robinson contends that these findings are either “clearly erroneous” or “contrary to the totality of the evidence.” Appellant’s Br. at 31, 32.

Again, we review findings for substantial evidence—any evidence in the record that could persuade a rational person that the challenged findings are true. *World Wide Video*, 117 Wn.2d at 387; *Stout*, 128 Wn. App. at 32. The question here is not whether the evidence may have supported other findings; the question is whether the record supports these findings. It does. RP (May 12, 2004) at 216-17 (support for finding 15), at 222-23 (support for finding 14), at 365 (support for finding 15), at 389 (support for finding 17); RP (Jan. 10, 2005) at 49-51 (support for finding 18), at 81-84 (support for finding 19 re: Bayes’ Theorem).

Regardless, these five findings are not material to our review of whether the trial court properly determined that Mr. Robinson is a sexually violent predator.

#### Sexually Violent Predator

Finally, Mr. Robinson argues that the court’s findings do not support its conclusions that he is a sexually violent predator.

Conclusion of law 2 states:

Each of the findings of fact enumerated herein has been proven beyond a reasonable doubt.

CP at 20. And the court stated at conclusion of law 9:

The evidence presented at [Mr. Robinson's] trial proves beyond a reasonable doubt that [Mr. Robinson] is a sexually violent predator, as that term is defined by RCW 71.09.020(16).<sup>[3]</sup>

CP at 20.

First, we cannot effectively review conclusion of law 2. The fact finder, not the Court of Appeals, determines whether the burden of persuasion has been met. *Nw. Pipeline Corp. v. Adams County*, 132 Wn. App. 470, 475, 131 P.3d 958 (2006). We, therefore, defer to the court's conclusion that the State met its burden here. *Stout*, 128 Wn. App. at 32.

Second, findings of fact 3,<sup>4</sup> 7, 8, 13, and 16<sup>5</sup> support the conclusion that Mr. Robinson is a sexually violent predator. A "sexually violent predator" is "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18). And these findings address each element of the definition of a "sexually

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<sup>3</sup> This definition is now in RCW 71.09.020(18). Laws of 2009, ch. 409, § 1.

<sup>4</sup> Finding of fact 3 states: "On or about September 19, 1990, [Mr. Robinson] was convicted in Yakima County Superior Court of the July 1990 First Degree Rape of an adult female, S.H." CP at 18.

<sup>5</sup> Findings of fact 7, 8, 13, and 16 are quoted above.

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violent predator.” The court’s conclusion is, therefore, proper. Mr. Robinson is a sexually violent predator.

We affirm the order of commitment.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Schultheis, C.J.

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Korsmo, J.